

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7654

In The
United States Court of Appeals

For The Second Circuit

CLARENCE H. McSHAN,

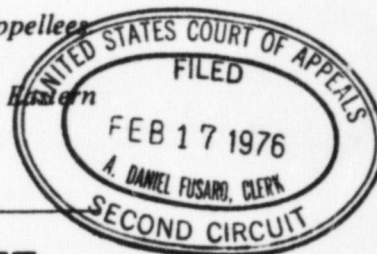
Appellant,

vs.

OMEGA LOUIS BRANDT ET FRERE, S.A. and SOCIETE
SUISSE POUR L'INDUSTRIE HORLOGERE
MANAGEMENT SERVICES, S.A.,

Appellees

*On Appeal from the United States District Court for the Eastern
District of New York*



APPENDIX FOR APPELLANT

SOLOMON M. LOWENBRAUN
Attorney for Appellant
122 East 42nd Street
New York, New York 10017
(212) OX 7-2299

(9198)

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a

DISTRICT		ROCKET	FILE NO.	FILE DATE	N/S	O	F	R	DEMAND	JUDGE	JURY	DOCKET
									OTHER	NUMBER	DEM.	NUMB
207	1	75	0450	03 26 75	4	190	PLACED			0718		COSTANTINO

PLANTIFFS

DEFENDANTS

CLARENCE H. MC BRIDE

CLARENCE L. MCLEAN

OMEGA LOUIS BRANDT, etc. et al.

OMEGA LOUIS BRANDT ET FRERE,
S.A., and SOCIETE SUISSE POUR
L'INDUSTRIE HORLOGERE MANAGEMENT
SERVICES, S.A.

(28 DEC 1941--ON) FOR ALL INFORMATION TO FILE ANY CLAIM AND DENY
ALL LIABILITY THEREFOR OR DAMAGE AND LOSS IN THE COMBATS

FOR RITE:
Solomon M. Lowenthal
122 E. 42nd Street
New York, N.Y. 10017
697-2341

100-10373
 Stephen J. O'Connor
 100-10373
 New York, N.Y. 10017
 100-10373

WILLIAM L. LORAIN, DEC. 1, 1975.

DATE	NR.	PROCEEDINGS
03-26-75		PETITION FOR REMOVAL AND BOND ON REMOVAL FILED. (Sup. Ct., Queens) (1)
3/27/75		Affidavit of mailing of notice of filing of Petition and Bond for removal filed. (3)
3-31-75		Memorandum in support of depts' motion to dismiss the complaint filed. (4)
3-31-75		Notice of motion ret. April 17, 1975 re motion to dismiss filed. (5)
4-15-75		Notice of cross motion ret 4-17-75 for an order remanding this action to the Supreme Court of the State of New York, Queens Cts. (6)
4-15-75		Reply to cross motion in support of motion to dismiss filed. (7)
4-15-75		Reply to cross motion of cross motion to dismiss filed. (8)
4-17-75		Reply memorandum filed. (9)
4-18-75		Before COSTANTINO, J.-Case called. Motion to remand and motion in opposition to motion to dismiss argued. Decision reserved. Reply affirmation of Solomon M. Lowenbraun filed. (10)
11-17-75		By COSTANTINO, J.-Memorandum and Order dtd 11-14-75 dismissing the complaint filed. (p/c) (11)
11-17-75		JUDGMENT dtd 11-17-75 that the ptlff take nothing of the debt and that the complaint is dismissed filed. Parties notified. (12)
11-20-75		Letter dtd 4-23-75 to J. Costantino from Solomon M. Lowenbraun filed. (mg) (13)
11-28-75		Letter dtd 4-25-75 to J. Costantino from Henry L. Shenier filed. (14)
11-28-75		Letter dtd 6-23-75 to J. Costantino from Solomon M. Lowenbraun filed. (mg) (15)
11-28-75		Letter dtd 6-24-75 to J. Costantino from Henry L. Shenier filed. (16)
11-28-75		Notice of appeal filed. Copy sent to C of A with copy of docket entries. (mg) (17)

SUMMONS AND COMPLAINT

3a

C 106—Summons with Notice, Blank Court.
Personal Service. 9-71

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

CLARENCE H. McSHAN,

Plaintiff,

against

OMEGA LOUIS BRANDT Et FRERE, S.A., and
SOCIETE SUISSE POUR L'INDUSTRIE
HORLOGERE MANAGEMENT SERVICES, S.A.,

Defendant s.

Index No.

Plaintiff designates

Queens

County as the place of trial

The basis of the venue is

Agreements executed in
Queens County.

Summons with Notice

Plaintiff resides at

County of

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 40 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York: January 20, 1975

Defendant's address:

XXXXXXXXXXXXXXXXXXXX

SOLOMON M. LOWENBRAUN,
Attorney(s) for Plaintiff
Office and Post Office Address
122 East 42nd Street
New York, New York 10017

The relief sought is

Upon your failure to appear, judgment will be taken against you by default for the sum of \$
with interest from 19 and the costs of this action.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----x
CLARENCE H. McSHAN,

Plaintiff,

VERIFIED
COMPLAINT:

- against -

- - -

OMEGA LOUIS BRANDT Et FRERE, S.A. and
SOCIETE SUISSE POUR L'INDUSTRIE
HORLOGERE MANAGEMENT SERVICES, S.A.,

Defendants.

-----x

The plaintiff, by SOLOMON M. LOWENBRAUN, Esq.,
his attorney, for his Complaint, respectfully alleges:

1. That plaintiff is the registered owner of
United States and foreign Patents all as enumerated on the
annexed "Exhibit A".

2. That American Railroad Curvelining Corpora-
tion is a New York corporation which maintains its principal
office at Douglaston, Queens County, New York, and is referred to
hereinafter as "ARC".

3. That on or about February 19, 1970, plaintiff
entered into a written agreement with ARC granting to ARC the
sole and exclusive right and license (subject to certain minor
exceptions) throughout the world to manufacture, have manufactured,

use and sell time-keeping and time-measuring instruments embodying one or more of the inventions created by plaintiff and covered in whole or part by the aforesaid patents.

4. That the aforesaid license agreement between plaintiff and ARC provided for the payment of a royalty to plaintiff, said royalty to be computed on the cost of each of the watch movements either manufactured or sold by ARC or by certain watch manufacturing companies specified in said Agreement.

5. That on information and belief, Defendant OMEGA LOUIS BRANDT Et FRERE S.A. (hereinafter referred to as "Omega"), is a Swiss corporation having its principal office at CH 2500 Bienne, Switzerland, and conducts business selling its watches and clocks in the City and State of New York.

6. That on information and belief, Defendant SOCIETE SUISSE POUR L'INDUSTRIE HORLOGERE MANAGEMENT SERVICES S.A. (hereinafter referred to as "SSIH"), is a Swiss corporation having its principal office at CH 2500 Bienne, Switzerland, and conducts business selling its watches and clocks in the City and State of New York.

7. That upon information and belief on or about March 6, 1970 by written agreement executed in the City and State of New York, ARC granted to defendant OMEGA, as ARC's sublicensee, subject to certain minor exceptions, the license to manufacture, have manufactured, use and sell time-keeping and time-measuring instruments embodying one or more of the inventions created by plaintiff and covered by the aforesaid Patents.

8. That the aforesaid Sublicense Agreement imposed upon defendant OMEGA the obligation to pay to ARC a royalty computed in accordance with formulae set forth in said Agreement related to the number of time-keeping and time-measuring instruments embodying one or more of plaintiff's inventions manufactured or sold by defendants, OMEGA and SSIH.

9. That upon information and belief the defendants, OMEGA and SSIH, subsequent to the execution of the Sublicense Agreement dated March 6, 1970, have manufactured, caused to be manufactured, used and sold time-keeping and time-measuring instruments covered by the aforesaid Sublicense Agreement in sufficient quantities to accrue a liability to ARC and plaintiff, under such Sublicense Agreement, in the amount of at least THREE HUNDRED THOUSAND (\$300,000.00) DOLLARS.

10. That the defendants, OMEGA and SSIH have omitted, failed, or neglected to pay the royalties which have accrued to ARC and plaintiff, pursuant to the aforesaid Sublicense Agreement, and said defendants continue to refuse to pay the royalties due to ARC and plaintiff, despite demand for payment thereof.

11. That by written assignment, ARC, the grantor in the Sublicense Agreement dated March 6, 1970, has assigned and conveyed all its rights to seek to enforce collection of the royalties and other payments due from defendants OMEGA and SSIH under said Agreement to plaintiff, CLARENCE H. McSHAN.

12. That by specific provision contained in the License Agreement between plaintiff and ARC, and in the Sublicense Agreement by ARC and defendant OMEGA, both said Agreements are required to be construed in accordance with, and be governed by the laws of the State of New York.

13. That upon information and belief defendants, OMEGA and SSIH are indebted to plaintiff, CLARENCE H. McSHAN in the sum of THREE HUNDRED THOUSAND (\$300,000.00) DOLLARS, no part of which has been paid although duly demanded.

WHEREFORE, plaintiff, CLARENCE H. McSHAN demands judgment for THREE HUNDRED THOUSAND (\$300,000.00) DOLLARS against OMEGA LOUIS BRANDT Et FRERE S.A. and SOCIETE SUISSE POUR L'INDUSTRIE HORLOGERE MANAGEMENT SERVICES S.A. together with interest from March 6, 1970 and the costs and disbursements of this action.

SOLOMON M. LOWENBRAUN,
Attorney for Plaintiff
Office & P.O. Address
122 East 42nd Street
New York, New York 10017

STATE OF NEW YORK, COUNTY OF New York ss.:

CLARENCE H. McSHAN, being duly sworn, deposes and says that deponent is the Plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes them to be true.

Sworn to before me, this 20th day of January, 1975.

CLARENCE H. McSHAN
CLARENCE H. McSHAN

EXHIBIT A - SCHEDULE OF PATENTS ANNEXED TO FOREGOING
SUMMONS AND COMPLAINTSCHEDULE OF PATENTS OF
CLARENCE H. MCSHAN

- - - -

Item

1. United States	Pat. No. 2,942,206	issued 6-21-60
2. United States	Pat. No. 2,950,447	issued 6-23-60
3. Canada	Pat. No. 627,861	issued 9-26-61
4. France	Pat. No. 1,147,598	issued 6-11-57
5. Switzerland	Pat. No. 371,618	issued 8-31-63
6. West Germany	Pat. No. 1,171,108	issued 5-27-64
7. Great Britain	Pat. No. 827,850	issued 5-30-60

EXHIBIT "A"

10a

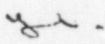
DEFENDANTS' RECEIPT FOR SERVICE OF THE SUMMONS AND COMPLAINT
(FRENCH)

Q U I T T A N C E

Reçu ce jour de Maître Jean Comment, Avocat à Bienne, Rue de
Nidau 11, un document intitulé Plaintiff daté du 20 janvier
1975 en la cause Clarence H. Mc Shan against Omega Louis Brandt
et Frère S.A. et Société Suisse pour l'industrie Horlogère
Management Services S.A. accompagné d'un document intitulé
Summons émanant du Supreme Court of the State of New York,
County of Queens daté du 20 janvier 1975.

Bienne, le 26 février 1975

Société Suisse pour l'industrie
Horlogère Management Services


Monsieur Georges-Adrien Matthey
Secrétaire général

DEFENDANTS' MOTION TO DISMISS COMPLAINT WITH AFFIDAVITS
OF GERALD MANDELBAUM AND NORMAN M. MORRIS

In the
UNITED STATES DISTRICT COURT
for the
Eastern District of New York

-----X
CLARENCE H. McSHANE,

Plaintiff,

v.

OMEGA LOUIS BRANDT ET FRERE, S.A., and
SOCIETE SUISSE POUR L'INDUSTRIE
HORLOGERE MANAGEMENT SERVICES, S.A.,

Defendants.

-----X

:

:

:

:

:

:

Civil Action

No. 75 C 450

(M.A.C.)

Motion to Dismiss Complaint
under Rule 12(b) (2) and (5) F.R.C.P.

COME NOW the defendants above named, and show
this honorable Court:

1. The defendant, OMEGA LOUIS BRANDT ET FRERE,
S.A. (hereinafter referred to as "OMEGA"), transacts no
business in the State of New York and, more particularly,
within the Eastern District of New York.

2. The defendant, SOCIETE SUISSE POUR
L'INDUSTRIE HORLOGERE MANAGEMENT SERVICES, S.A. (hereinafter
referred to as "SSIH"), transacts no business in the State
of New York and, more particularly, within the Eastern
District of New York.

3. On information and belief, neither OMEGA nor SSIH has committed or is committing any tortious act, of any nature or description, in the State of New York and, more particularly, within the Eastern District of New York, nor any tortious act anywhere causing injury to the plaintiff, CLARENCE H. McSHAN.

4. Neither of the defendants above named owns, uses or possesses, nor has owned, used or possessed, any real property within the State of New York and, more particularly, within the Eastern District of New York.

5. At the time of the purported service upon defendants under CPLR, neither of the defendants was subject to the jurisdiction of the Supreme Court of the State of New York nor to the jurisdiction of this Court.

6. Neither of the defendants has maintained, nor is maintaining, any office, bank account, mailing address, telephone listing, warehouse, stock of goods, or agent, in the State of New York and, more particularly, within the Eastern District of New York.

7. Defendant SSIH is not a party to any contract with either plaintiff or plaintiff's assignor and is engaged in providing services to affiliated companies, including OMEGA, all located without the State of New York and, more particularly, outside the Eastern District of New York.

8. Defendant OMEGA sells watches, f.o.b. Switzerland, to a wholly independent legal entity, NORMAN M. MORRIS CORPORATION (hereinafter referred to as "MORRIS"), a corporation of the State of New York, whose address is 301 East 57th Street, City, County and State of New York, and has been so doing since 1937.

9. The relationship between OMEGA and MORRIS is that of supplier and purchaser and trademark licensor and trademark licensee.

10. MORRIS is thus licensed to use the trademark "OMEGA" and the name "OMEGA" in respect of articles imported by MORRIS from Switzerland into the United States or manufactured in part by MORRIS for sale in the United States; and MORRIS maintains listings in the New York telephone directories under the names of "Omega Watch Company", "Omega Watch Company Service" and "Omega Watch Service Center".

11. The products imported by MORRIS into the United States are serviced by MORRIS.

All of the foregoing will more fully appear from the affidavits of GERARD MANDELBAUM and NORMAN M. MORRIS, hereto attached.

WHEREFORE, defendants, OMEGA LOUIS BRANDT ET FRERE, S.A., and SOCIETE SUISSE POUR L'INDUSTRIE HORLOGERE MANAGEMENT SERVICES, S.A., and each of them, now move the

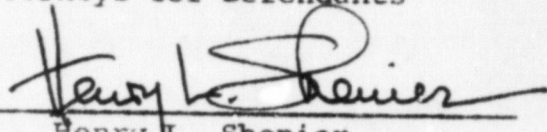
14a

Court, pursuant to Rule 12(b) (?) and (5) of the Federal Rules of Civil Procedure, to enter an order that the complaint may stand dismissed out of court, with costs to be paid to them by the plaintiff, CLARENCE H. McSHAN, on the ground that this Court lacks jurisdiction over the person of either of the defendants.

SHENIER & C'CONNOR
Attorneys for Defendants

March 28, 1975

By


Henry L. Shenier
A Member of the Firm
230 Park Avenue
New York, N. Y. 10017

Tel: (212) MU 4-4639

Defendants.

That he is familiar with the defendants' business dealings.

That neither of the defendants above named transacts any business in the State of New York and, more particularly, within the Eastern District of New York.

That, to the best of his knowledge, information and belief, neither of the defendants above named has committed or is committing any tortious act, of any nature or description, in the State of New York and, more particularly, within the Eastern District of New York, nor any tortious act anywhere causing injury to the plaintiff, CLARENCE H. McSHAN.

That neither of the defendants above named owns, uses or possesses, nor has owned, used or possessed, any real property within the State of New York, and more particularly, within the Eastern District of New York.

That, at the time of the purported service upon the defendants under C.P.L.R. 302, neither of the defendants was subject to the jurisdiction of the Supreme Court of the State of New York nor to the jurisdiction of this Court.

That neither of the defendants has maintained any office, bank account, mailing address or telephone listing, warehouse, stock of goods or agent, in the State of New York and more particularly, within the Eastern District of New York.

That defendant SOCIETE SUISSE POUR L'INDUSTRIE HORLOGERE MANACEMENT SERVICES, S.A. (hereinafter referred to as "SSIH") is not a party to any contract with either of plaintiff or plaintiff's assignor.

That defendant SSIH is engaged in providing management services to affiliated corporations including OMEGA LOUIS BRANDT ET FRERE S. A. (hereinafter referred to as "OMEGA"), all located without the State of New York and more particularly outside the Eastern District of New York.

That defendant OMEGA entered into the sublicense agreement with AMERICAN RAILROAD CARVELINING CORPORATION in Switzerland, and not in the State of New York and, more particularly, not within the Eastern District of New York.

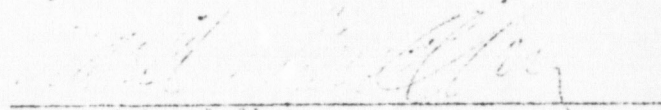
That defendant OMEGA sells watches, F.O.B. Switzerland, to a wholly independent legal entity, namely, NORMAN M. MORRIS CORPORATION ("MORRIS"), a corporation of the State of New York, whose address is 301 East 57th Street, City, County and State of New York.

That the relationship between OMEGA and MORRIS is that of supplier and purchaser and trademark licensor and licensee.

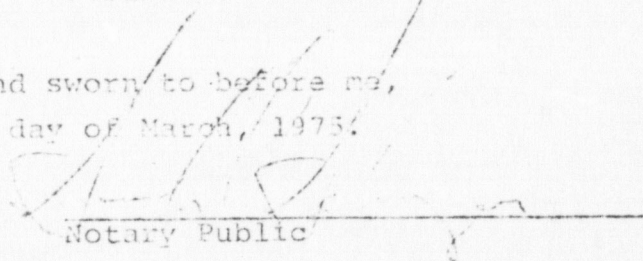
That MORRIS is licensed to use the trademark "OMEGA" and the name "OMEGA" in respect of articles imported by MORRIS from Switzerland into the United States or manufactured in part by MORRIS for sale in the United States; and MORRIS maintains listings in New York telephone directories under the names of "Omega Watch Company", "Omega Watch Company Service" and "Omega Watch Service Center";

That the products shipped to Morris into the United States are serviced by MORRIS.

Further deponent saith not.


Gerard Mandelbaum

Subscribed and sworn to before me,
this 2nd day of March, 1975.


Notary Public

SANDER C. SCHWENKER
Notary Public, State of New York
No. 303389515
Qualified in Nassau County
Commission Expires March 30, 1975

In the
UNITED STATES DISTRICT COURT
for the
Eastern District of New York
-----x

CLARENCE H. McSHAN,

Plaintiff,

-against-

OMEGA LOUIS BRANDT ET FRERE S.A.,
and SOCIETE SUISSE POUR L'INDUSTRIE
HORLOGERE MANAGEMENT SERVICES, S.A.,

Defendants.

AFFIDAVIT IN
SUPPORT OF MOTION
under Rule 12(b)
(2) and (5) F.R.C.P.

Civil Action
No. 75 C 450
(M.A.C.)

-----x
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

NORMAN M. MORRIS, being duly sworn, deposes and
says:

That he is a citizen of the United States of America.

That he is President of NORMAN M. MORRIS CORPORATION
(hereinafter referred to as "MORRIS"), a corporation of the
State of New York, which has a place of business at 301 East
57th Street, City, County and State of New York.

That he has read the annexed affidavit of Gerard
Mandelbaum, Esq. and corroborates all statements made
therein regarding the activities of MORRIS.

Further in corroboration thereof, he states:

That MORRIS is licensed to use the trademark "OMEGA"
and the name "OMEGA" in respect of articles imported from
Switzerland into the United States and on articles manu-
factured in part by MORRIS for sale in the United States;

That the relationship between defendants OMEGA,
LOUIS BRANDT ET FRERE S.A. (hereinafter "OMEGA") and MORRIS

20a

is basically that of supplier and purchaser;

That the products bought by MORRIS from OMEGA are delivered F. O. B. Switzerland;

That MORRIS is a completely independent entity;

That MORRIS has inserted and maintains listings in the New York City telephone directories under the names of "Omega Watch Company, 301 East 57th Street" and "Omega Watch Company Services, 301 East 57th Street". The listing "Omega Watch Service Center, 16 West 46th Street" is maintained by a service center authorized by MORRIS to repair and service OMEGA watches.

That the products imported by MORRIS into the United States are serviced by MORRIS.

Further deponent saith not.

Sworn to before me this
20th day of March, 1975.

[Signature]
Notary Public

[Signature]
MORRIS M. MORRIS

MARTIN B. DRUCKER
NOTARY PUBLIC, New York
Qualified in Rockland County
Term Expires March 30, 1975

MARTIN B. DRUCKER
NOTARY PUBLIC, State of New York
No. 44-6105337
Qualified in Rockland County
Term Expires March 30, 1976

21a

AFFIDAVIT OF CLARENCE H. McSHAN DATED APRIL 9, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----x
CLARENCE H. McSHAN,

Plaintiff,

v.

OMEGA LOUIS BRANDT ET FRERE, S.A., and
SOCIETE SUISSE POUR L'INDUSTRIE
HORLOGERE MANAGEMENT SERVICES, S.A.,

Defendants.
-----x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

CLARENCE H. McSHAN, being duly sworn, deposes, and says:

1. That I am the plaintiff in the within-entitled action, and I submit this affidavit in opposition to the motion by the defendants to dismiss the complaint herein on the alleged ground that this Court lacks jurisdiction over the person of either of the defendants, and in support of the cross-motion by plaintiff for an Order of this Court remanding this action to the Supreme Court of the State of New York, Queens County.

2. That I am the holder of a series of patents which are set forth on a schedule annexed to and made a part of the Complaint heretofore caused by me to be served on the defendants in this action.

3. That pursuant to an agreement in writing, I had granted a license to the AMERICAN RAILROAD CURVELINING CORPORATION, Queens County, to use and otherwise practice all of the inventions described in the patents enumerated in the complaint herein.

4. That by Agreement in writing dated March 6, 1970, AMERICAN RAILROAD CURVELINING CORPORATION, had thereafter entered into an Agreement with defendant, OMEGA LOUIS BRANDT ET FRERE, S.A. (hereinafter referred to as "OMEGA"), granting to said defendant the right to manufacture, use, and sell, time-keeping and time-measuring instruments embodying all of the inventions covered by the aforesaid patents. A copy of said Agreement (hereinafter called "Sublicense Agreement") is annexed hereto as Exhibit "A".

5. That in accordance with the terms of the Sublicense Agreement, Exhibit "A", and by separate written instrument, AMERICAN RAILROAD CURVELINING CORPORATION (hereinafter called "ARC") has assigned all of its rights against the defendants to me, as plaintiff herein, to institute the instant action.

6. That this action was instituted in the Supreme Court of the State of New York, in accordance with the terms of Paragraph "9" of Exhibit "A" which in part reads as follows:

"9. (a) This Agreement shall be construed in accordance with, and governed by the laws of the State of New York, applicable to contracts made and to be performed therein, . . ."

7. The attention of the Court is invited to the fact that Exhibit "A" was executed on March 6, 1970, a date subsequent to the determination of the highest court of the State of New York, the Court of Appeals in the action known as Singer v. Walker, 15 N.Y.2d 443,464, decided May 27, 1965.

8. The attention of this Court is further invited to the fact that in accordance with the N.Y. State Civil Practice Law and Rules, Sections 302 and 313, the summons and verified complaint issued out of the State Court was served on the defendants at their offices in Bienne, Switzerland, by an attorney (the Swiss equivalent being an avocat). Paragraph "10" of the Sublicense Agreement, Exhibit "A" provides that the defendant OMEGA conceded that any notice delivered to it in connection with Exhibit "A" "shall be considered given" when delivered personally . . . , if to Omega, to it at CH 2500 Bienne, Switzerland."

9. The attention of the Court is invited to the fact that there is annexed to the defendants' Petition for Removal filed in this Court, a photocopy of a receipt, or admission of service, acknowledging the receipt of the summons issued out of the State Court herein on behalf of both defendants at Bienne, Switzerland on 26 February, 1975.

10. Examination of the defendants' Notice of Motion, and its moving affidavits clearly acknowledge that the defendant OMEGA, is "doing business" in the State of New York in full compliance with the standards established and expounded in the decision of the highest court in New York State in Singer & Walker, 15 N.Y. 443, 464. The defendants' moving affidavits describe the establishment of channels of commerce for the delivery of OMEGA time-keeping and time-measuring instruments for widespread sale and distribution in the State of New York.

11. In effect, the defendants' moving affidavits clearly establish the creation of a distribution agency by OMEGA in the establishment of the relationship with Norman M. Morris Corporation which then operates as Omega Watch Company, Omega Watch Company Service, and Omega Watch Service Center, all in the City, County, and State of New York.

12. Attached hereto as Exhibit "B" is a copy of an advertisement which the defendants' agent has placed in the New York edition of TIME Magazine in late 1974 or early 1975. The interesting aspect of this advertisement, Exhibit "B", is that the electronics devices sought to be sold by the defendants in the said advertisement incorporate some or all of the patents which are covered by the Sublicense Agreement, Exhibit "A", which of course is the principal subject matter of this suit.

13. It would appear that this Court is sufficiently aware of the intensive marketing area which is included in both the Southern and Eastern Districts of New York, so that it would not be a burden to the Court to take judicial notice of the widespread sale of "OMEGA" watches effected in the marketing area which extends from Montauk Point to the Northern reaches of the metropolitan New York City area. It would almost go without saying that there is hardly a specialty shop, jewelry, or department store located in this highly active retail market that does not have in its inventory at least one Omega Watch manufactured by the defendants, and sold presumably through its marketing agents here in New York State.

14. It would go without saying that the defendants have introduced substantial quantities of their time-measuring, and time-keeping devices or products into the State of New York as the result of solicitations, such as Exhibit "B", and through other advertising media. The term "Omega Watch" has become almost a household word so that this or the State Court could determine without difficulty that the defendants transact some or any business within the State of New York.

15. That the defendant, SOCIETE SUISSE POUR L' INDUSTRIE HORLOGERE MANAGEMENT SERVICES, S.A., (hereinafter known as "SSIH"), is the parent of defendant, OMEGA, and is described in Exhibit "A" as one of the corporations whose sales figures (Paragraph "3" of Exhibit "A") are a measuring device for the license fees reserved

in the Sublicense Agreement, Exhibit "A". SSIH had acknowledged its obligations to the plaintiff in connection with dealings with the plaintiff, and had instituted negotiations with the plaintiff to enter into an Agreement to substitute a different license agreement with the plaintiff in place and instead of Exhibit "A". Representatives of SSIH had come to New York, had conferred with plaintiff and with the principal of AMERICAN RAILROAD CURVELINING CORPORATION, and had proposed a form of Agreement, copy of which is annexed as Exhibit "C", to the plaintiff. Although the plaintiff refused to conclude the negotiations and sign the Agreement, Exhibit "C", it is interesting to note that both defendants had caused appropriate officers of their corporations to affix their signatures to the Agreement as proposed to the plaintiff. In addition, annexed hereto as Exhibit "D" is a paper drawn on the stationery of defendant, SSIH, which is labelled AFFIDAVIT, and is signed by one Hans Widmer, who is apparently the Director of Research and Development for defendant SSIH, as well as an officer of defendant, OMEGA.

16. The attention of the Court is invited to the contents of Exhibit "C" to observe that defendant SSIH, clearly admits the relationship of defendant OMEGA as a subsidiary or an affiliate, and that the defendant OMEGA is engaged in the practice of manufacturing various Omega watches presumably including the inventions encompassed in the Sublicense Agreement, Exhibit "A".

17. It is well to note, that Mr. Widmer in his affidavit, Exhibit "D", states " That as a result of my responsibilities and activities, I am well acquainted with all time-piece movements currently sold by the aforementioned society" (obviously SSIH) "whether in the forms of Watches or clocks; "

18. In substance, we have a situation where the defendant OMEGA, executes an Agreement, Exhibit "A", with a firm, Plaintiff's assignor, located in New York State where said defendant conducts extensive retail business, albeit through an exclusive agency, and in the Agreement consents to be governed by the Laws of New York, then sends its officers to New York to consult with plaintiff in New York City. The defendants further negotiated with the plaintiff to seek to replace an existing agreement, Exhibit "A", with a superseding agreement to be entered into by the plaintiff and defendant SSIH, and defendant SSIH submits to the plaintiff an affidavit respecting the manufacture and sale of time-piece movements containing plaintiff's patented inventions. All of these acts can be held to have met the duties of "doing business" under the due process clause sufficiently to justify exercise of in personam jurisdiction over the defendants. The conclusion is inescapable that the maintenance of this suit does not offend the traditional notions of fair play and substantial justice.

19. Moreover, in the light of the recitation in Exhibit "A", that this Agreement should be construed in accordance with and governed by the laws of the State of New York, the U.S.

District Court should and must remand this action to the Court from whence it came, namely the Supreme Court of the State of New York, Queens County.

WHEREFORE, your deponent prays the Court to make an Order denying the motion of the defendants for a dismissal of the Complaint in all respects, and to make an Order granting the cross-motion of the plaintiff remanding this improperly removed action from the United States District Court to the Supreme Court of the State of New York, Queens County, and for such other and further relief as to the Court may seem just and proper.

Sworn to before me this
7th day of April, 1975.

John M. Gonsky

JOHN M. GONSKY, JUDGE
Supreme Court, County of New York
Queens County, New York

Clarence H. McShan
CLARENCE H. McSHAN

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

EXHIBIT A - TOTAL OF AGREEMENT

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SUBLICENSE AGREEMENT

AGREEMENT dated March 6, 1970, by and between AMERICAN RAILROAD CURVELINING CORPORATION, of 137 Hollywood Avenue, Douglaston, Long Island, New York (hereinafter called "ARC") and OMEGA LOUIS BRANDT ET FRERE S.A., of Bienne, Switzerland (hereinafter called "Omega").

R E C I T A L S :

A. Clarence H. McShan (hereinafter called "McShan"), the registered owner of the patents and patent applications listed in Schedule "A" annexed hereto, has granted ARC an exclusive license, subject only to the licenses listed in Schedule "B" annexed hereto, under the inventions claimed in said patents and all such past and future modifications and improvements thereof made by McShan as are dominated by any claims of any of the patents listed in Schedule "A". All of the aforesaid inventions, modifications, and improvements are hereinafter collectively called the "Inventions", and the patents and patent applications listed in Schedule "A" and all other patent applications and patents heretofore or hereafter filed or granted with respect to the Inventions are referred to hereinafter as "McShan's Patents".

B. Omega, a subsidiary of Societe Suisse Pour L'Industrie Horlogere ("SSIH"), desires to obtain from ARC, and ARC is willing to grant to Omega, on the terms and conditions set forth hereinafter, rights under McShan's Patents and other rights as provided hereinafter;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, it is agreed as follows:

1. ARC hereby grants to Omega, as ARC's sublicensee, the sole and exclusive right and license (subject only to the rights referred to in Schedule "b") throughout the world and during the term of this Agreement to manufacture, have manufactured, use, and sell time-keeping and time-measuring instruments (whether or not intended to be carried on the person) embodying one or more of the Inventions, and otherwise to practice the Inventions.

2. ARC agrees to supply to Omega at its request all such specifications, drawings, blueprints, designs, lists of raw materials and components, tolerances, testing procedures, techniques and other technical

information as ARC may now possess relating to the Inventions and the manufacture of devices embodying any of the Inventions as well as all information in ARC's possession or available to it relating to the applications for, and prosecution of the applications for, McShan's Patents.

3. (a) In consideration of the rights granted to it hereunder, Omega agrees to pay to ARC, in addition to any other amounts payable hereunder, (i) upon the execution of this Agreement, an amount equal to the out-of-pocket expenses incurred by ARC to date in obtaining the rights licensed hereunder plus two and one-half percent of such expenses to cover the related overhead of ARC, and (ii) in the manner and at the times specified in subparagraph (b) below, a royalty equal to the greater of (x) 6% of the cost of each Movement manufactured by Omega Louis Brandt et Frere S.A. (hereinafter called "Omega"), Societe Suisse Pour L'Industrie Horlogere S.A. (hereinafter called "SSIH") or any subsidiary of SSIH, or (y) 1.2% of the Net Sales Price of such Movement (which 1.2% shall be increased to 2.4% of the Net Sales Price for any country in which McShan has one or more patent applications and in which there are no patent royalties

owing by the manufacturer to others under agreements in existence at the time such manufacturer is licensed pursuant hereto); provided, however, that

(1) for each Movement so manufactured for a clock or pendulum, the royalty shall be \$0.024, instead of any royalty referred to above;

(2) should the rights granted hereunder be curtailed by partial nullification, declaration of dependence, or occurrence of rights of prior use, permitting competitors to manufacture products covered by this Agreement with the use of the basic inventive idea, without infringing rights granted hereunder, and under equal competitive conditions, there shall be an appropriate reduction of the 2.4% royalty referred to in clause (y) only, and

(3) the same shall apply accordingly if when the patents referred to in Schedule A have expired, only additional patents of less significance are still in force.

(b) Royalties under subparagraph (a) shall be payable within forty-five days after each calendar half-year during the term of this Agreement, and within forty-five days after the expiration thereof, in respect of Movements sold during the royalty-accounting period preceding such date. Each such payment shall be made in the United States in United States currency, and shall be accompanied by a statement setting forth in reasonable detail the name of the manufacturer, the model type, the quantity, and the amount of royalty for each model.

(c) For purposes of this paragraph 3,

(1) the term "Movement" shall mean all elements of a time-keeping instrument embodying one or more of the inventions and covered by a then unexpired patent, or pending patent application included in the McShan Patents, but excluding strap, case and analogous housing, pendula, crown, dial, crystal and batteries;

(2) the cost of a Movement shall mean the manufacturer's cost of the Movement (before Royalty hereunder) computed in accordance with the applicable provisions of Swiss law in effect from time to time;

(3) the term "Net Sales Price" as used herein shall mean and include the selling price of Movements sold by the manufacturer less (a) trade discounts allowed and taken, and (b) allowance for movements and clocks returned. Movements shall be deemed sold under this Agreement when they have been billed out and shipped to the vendee thereof.

(d) Omega agrees to keep accurate accounting records sufficient to permit verification of royalties payable to ARC hereunder. Omega shall permit the inspection of such records upon ten days' written notice during normal business hours of normal business days at Omega's regular place of business by an independent certified public accountant duly authorized and appointed by ARC and reasonably satisfactory to Omega, but such inspection shall not be made more than once each year, all expenses relating thereto shall be paid by ARC, and such accountant shall report to ARC only the amount of royalties due.

4. Omega shall have the right to sublicense any right or rights under this Agreement (except that no rights under paragraph 6 may be sublicensed except to SSIH or another subsidiary thereof) but shall not assign this Agreement without the consent of ARC. Nothing contained herein shall, however, be deemed to relieve Omega, in case of a sublicense to SSIH or another subsidiary of SSIH, from the obligation to pay or cause to be paid the royalties referred to in paragraph 3 hereof. Any consideration received by Omega from sublicensing of rights hereunder to other than SSIH or a subsidiary of SSIH shall be shared by Omega, ARC and McShan in equal thirds; provided, however, that the amount to be paid by such sublicensee and to be received by McShan as his share of such sublicensing fees shall not be less per Movement made and sold than the royalty per Movement referred to in clause (y) of paragraph 3(a) reduced by one-sixth and as modified by the operation of the provisos to said paragraph.

5. Notwithstanding anything to the contrary in this Agreement, if the aggregate of all amounts paid by Omega to ARC pursuant to any provisions of this Agreement (other than paragraph 6) in any calendar year beginning 1970 are less than the amount shown below opposite that calendar year, and if Omega does not pay

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to ARC a sum sufficient to make up the difference within seventy-five days after the end of said calendar year, then ARC shall have the right to terminate this Agreement upon written notice to Omega at any time within seventy-five days after expiration of said seventy-five day period:

1970	US \$10,000
1971	US \$20,000
1972	US \$30,000
1973	US \$40,000
1974	US \$50,000
Each calendar year thereafter	US \$50,000

6. (a) Omega shall have the sole and exclusive right, in its own discretion, and in its own name, McShan's name, or ARC's name, or any combination thereof, to prosecute, defend and/or settle, at its own expense, any claim, action, or other proceeding arising out of or concerning any past, present or future infringement of any of McShan's Patents or any other violation or infringement of any of the Inventions or any right hereunder. Omega will consult with ARC as to the course of action to be taken by it hereunder, and will fully inform ARC monthly of all dis-

cussions and proceedings relating, or pursuant, to any such course of action. If any action is to be taken in any court of the United States of America (or any state, territory or dependency thereof) or before any administrative agency of such country, state, territory or dependency, such action shall be carried on by counsel mutually agreed upon by Omega and ARC. If ARC notifies Omega of any infringement referred to in the first sentence of this paragraph and Omega shall not commence negotiation with the infringer with respect to the same within 60 days after such notice and continue such negotiation to settlement or follow it with prosecution to final judgment the rights granted to Omega under the first sentence of this paragraph with respect to such infringement shall revert to ARC.

(b) All moneys and other benefits obtained by any party in or as a result of any claim, action, or proceeding referred to in this paragraph 6 shall be applied first to the payment (or reimbursement) out of such moneys of all expenses incurred in connection with such claim, action or proceeding, including any consulting fees paid or payable to ARC in connection therewith. The balance of whatever is so obtained shall be shared by Omega, ARC and McShan in equal thirds. Nothing contained in this paragraph 6 shall be construed as authorizing the

reduction of the royalty rates specified in paragraph 3(a), or the minimum amount of sublicense fees payable under paragraph 4, or as superseding or modifying the provisions of paragraph 5.

7. The term of this Agreement shall be until the expiration of the last-to-expire of the McShan Patents listed in Schedule A or granted during the life of the last-to-expire of the patents listed except that if any patent application included in McShan's Patents is pending upon the expiration of such last-to-expire patent, the term of this Agreement shall be extended until abandonment of such application or expiration of any patent granted thereon. Omega shall have the right to terminate this Agreement at any time by written notice to ARC specifying a termination date no sooner than six months after the giving of such notice. On the date so specified in such written notice, this Agreement and all sublicenses granted hereunder shall terminate, except that

(i) any sublicense granted hereunder shall survive such termination if by its terms it is intended to survive such termination, provided, however, that any such surviving sublicense shall terminate unless the aggregate amounts paid to ARC in respect

of all such surviving sublicenses equal or exceed, for each year referred to in paragraph 5, the amount set forth in said paragraph in respect of that year;

(ii) no obligation to ARC accrued to the date of such termination shall terminate or be affected by such termination;

(iii) the provisions of paragraph 6(b) and the last sentence of paragraph 4 shall survive such termination and continue in full force and effect for the full term referred to in paragraph 7.

8. ARC hereby represents, warrants, and agrees that it is fully authorized to license to Omega the rights being licensed to Omega by this Agreement and that to the best of the knowledge of ARC, practice of such rights will not infringe the rights of any other person; that ARC has full right, power and authority to enter into and perform this Agreement; that ARC has not and will not, so long as this Agreement remains in effect, grant or attempt to grant, to any other person, firm or corporation, rights of any kind the exercise of which would derogate from or be inconsistent with the rights granted to Omega under this Agreement; and that subject to compliance by Omega with the provisions of this Agreement, ARC will

perform all of its obligations, and make all payments rightfully required of it, under its agreement with McShan.

9. (a) This Agreement shall be construed in accordance with and governed by the laws of the State of New York, applicable to contracts made and to be performed therein, and it may not be modified or amended except by an instrument in writing signed by both parties hereto. This Agreement sets forth the entire agreement and understanding between the parties and merges all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties or representations other than as expressly provided in this Agreement.

(b) The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or to deprive that party thereafter of the right to insist upon strict adherence to that term or to any other term of this Agreement. Any waiver must be in writing. The invalidity or unenforceability of any provision or part of this Agreement shall not affect the validity or enforceability of any other provision or part of this Agreement.

10. Any notice or other communication to any party under this Agreement shall be in writing and

shall be considered given when personally delivered or when mailed by registered mail, return receipt requested, to such party at the following addresses (or at such other address as such party may specify by notice to the other): If to ARC, to it at 137 Hollywood Avenue, Douglaston, Long Island, New York; if to Omega, to it at CH 2500 Bienne, Switzerland.

IN WITNESS WHEREOF the parties have executed
this Agreement as of the day and year first above written.

AMERICAN RAILROAD CURVELINING
CORPORATION

By

President

OMEGA LOUIS BRANDT ET FRERE S.A.

By

By James M. Hadden

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SCHEDULE "A"

Item

1. United States	Pat. No.	2,942,205 issued	6-21-60
2. United States	Pat. No.	2,950,447 issued	8-23-60
3. Canada	Pat. No.	627,861 issued	9-26-61
4. France	Pat. No.	1,147,598 issued	6-11-57
5. Japan	Ser. No.	7918/1956 filed	3-28-56
6. Switzerland	Pat. No.	371,618 issued	8-31-63
7. West Germany,	Pat. App. No.	1,171,188 published	5-27-64
8. Great Britain	Pat. No.	827,860 issued	5-30-60

SCHEDULE "B"

Agreement (hereinafter called "the Junghans Agreement") between C. HUNTER McSHAN and GEBRUDER JUNGHANS A.G. dated January 1, 1968 granting Gebruder Junghans A.G. and Diehl the following rights:

A. The exclusive right to manufacture and sell Clock Movements in the German Federal Republic.

B. The non-exclusive right to sell the Clock Movements throughout the world other than the German Federal Republic.

C. The non-exclusive right to manufacture Pendulum Clock Movements in the German Federal Republic.

D. The non-exclusive right to sell Pendulum Clock Movements throughout the world.

E. The exclusive right to manufacture Watch Movements in the German Federal Republic.

F. The non-exclusive right to sell Watch Movements throughout the world.

As used above, and hereafter,

(a) The term "Clock Movements" means time-keeping devices containing balance wheel regulators;

(b) The term "Pendulum Clock Movements" means time-keeping devices utilizing a freely swinging mass subject to the combined forces of gravity and momentum as the frequency reference; and

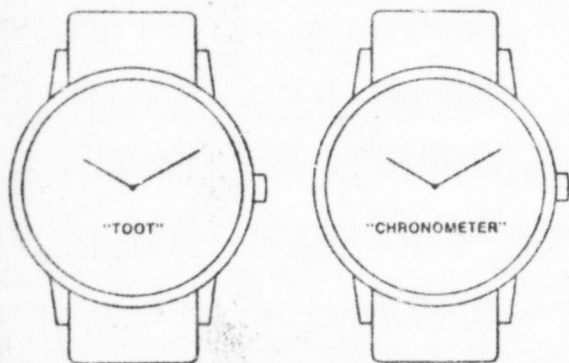
(c) The term "Watch Movements" means movements adapted to be carried on the person.

Under the Junghans Agreement, McShan is obligated to submit to Gebruder Junghans inventions relating to clocks and watches made subsequent to the filing of the licensed patents and to give options for six months to acquire rights thereunder for the same territory at a royalty rate not to exceed 5 percent (5%) of sales. The Junghans Agreement specifically exempts, however, inventions which McShan might make while a bona fide employee or consultant to another company.

An agreement is being negotiated between McShan and the Kinnenger und Oberfeld company for the granting to the latter of a non-exclusive right to manufacture Pendulum Clock Movements in the German Federal Republic and a non-exclusive right to sell throughout the world Pendulum Clock Movements manufactured by such company in the German Federal Republic.

Beware of tuning fork watches that go "toot!"

All tuning fork watches go "hummm". But some also go "toot". That happens when a watch company says lavish things about its own watches. It's called "blowing your own horn."



On the other hand, when the Official Swiss Chronometer Testing Institute says something nice about a watch, that's worth listening to. And they had something very nice to say about the Omega tuning fork watches. They said "Chronometer", which is a word that speaks louder than advertising.

"Chronometer" tells you that the Omega tuning fork timepiece will provide lasting accuracy. It will survive forces such as gravity and acceleration that tend to make other tuning fork watches lose accuracy - and prevents them from earning a chronometer rating.

Every Omega tuning fork timepiece has the word "Chronometer" proudly written on its face. Other tuning fork watches might just as well read "toot".

Omega Electronic Watches, stainless and 18k gold, \$165 to \$2350. Prices subject to change. For your free brochure write Omega Watch Company, Omega Bldg., 301 E. 57th Street, New York, N.Y. 10022.

Ω OMEGA ELECTRONICS

The tuning fork timepiece with the chronometer rating.





SOCIÉTÉ SUISSE POUR
L'INDUSTRIE HORLOGÈRE
MANAGEMENT SERVICES S.A.

EXHIBIT C - PAGES 1 AND 7 OF THE PROPOSED AGREEMENT

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L I C E N S E A G R E E M E N T

AGREEMENT dated December 14, 1972 by and between
C. Hunter McShan of Box 532, Harper Star Rt., Kerrville,
Texas 78028, USA (hereinafter called MCSHAN) and SOCIETE
SUISSE POUR L'INDUSTRIE HORLOGERE MANAGEMENT SERVICES S.A.,
of 2500 Bienne, Switzerland (hereinafter called SSIH).

R E C I T A L S

A. WHEREAS MCSHAN is the registered owner of the
patents and patent applications listed in Schedule "A"
annexed hereto, the inventions claimed in said patents
and all future modifications and improvements thereof
made by MCSHAN as are dominated by any claims of any of
the patents listed in Schedule "A" are hereinafter
collectively called the "Inventions", and the patents
and patent applications listed in Schedule "A" and all
other patent applications and patents heretofore or
hereafter filed or granted with respect to the Inventions
are referred to hereinafter as "MCSHAN's patents".

EXHIBIT "C"

to any other term of this agreement. Any waiver must be in writing. The invalidity or unenforceability of any provision or part of this agreement shall not affect the validity or enforceability of any other provision or part of this agreement.

16. Any notice or other communication to any party under this agreement shall be in writing and shall be considered given when personally delivered or when mailed by registered mail, return receipt requested, to such party at the following addresses (or at such other address as such party may specify by notice to the other): If to SSIH, to it at 2500 Bienne, Switzerland; if to MCSHAN, to him at Box 532, Harper Star Rt, Kerrville, Texas 78028.

Date: SOCIETE SUISSE POUR L'INDUSTRIE HORLOGERE
MANAGEMENT SERVICES S.A.

By: *[Signature]* *Haus [illegible]*

Date: C. HUNTER MCSHAN

By: _____

Date: AMERICAN RAILROAD CURVELINING CORPORATION

By: _____

Date: OMEGA, LOUIS BRANDT & FRERE S.A.

By: *[Signature]* *Haus [illegible]*

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NOTICE OF CROSS-MOTION TO REMAND
(Filed April 15, 1975)
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
----- x
CLARENCE H. McSHAN,

Plaintiff,

v.

OMEGA LOUIS BRANDT ET FRERE, S.A., and
SOCIETE SUISSE POUR L'INDUSTRIE
HORLOGERE MANAGEMENT SERVICES, S.A.,

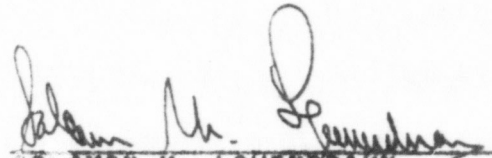
Defendants.
----- x

S I R S :

PLEASE TAKE NOTICE that on the affidavit of CLARENCE H. McSHAN sworn to the 9th day of April, 1975, the undersigned will cross-move this Court before Honorable Mark A. Costantino, District Judge, on the 17th day of April, 1975, at 10:00 o'clock in the forenoon of that day, or at such other time as the defendants' motion to dismiss the complaint shall be heard, for an Order pursuant to 28 U.S.C. 1447 remanding this action to the Supreme Court of the State of New York, Queens County, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
April 15, 1975.

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SOLOMON M. LOWENBRAUN
Attorney for the Plaintiff
Office & P.O. Address
122 East 42nd Street
New York, New York 10017

Tel.: (212) OXford 7-2293

TO:

SHENIER & O'CONNOR, ESQS.
Attorneys for Defendants
Office & P.O. Address
230 Park Avenue
New York, New York 10017

ORDER AND OPINION OF THE COURT BELOW APPEALED FROM
(Filed November 17, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CLARENCE H. MCSHAN,

Plaintiff,

75-C-450

v.

^B
OMEGA LOUIS GRANDT ET FRERE,
S.A., and SOCIETE SUISSE POUR
L'INDUSTRIE HORLOGERE MANAGEMENT
SERVICES, S.A.,

MEMORANDUM
and ORDER

NOV 14 1975

Defendants.

-----X
COSTANTINO, D.J.

In this action to recover damages for breach of contract, defendants have moved for dismissal of the complaint pursuant to Fed.R.Civ.P. 12(b)(2) and 12(b)(5), on the ground that this court lacks personal jurisdiction over them. Plaintiff opposes this motion and has submitted a cross-motion to remand this case to the Supreme Court of the State of New York. This court, having read the supporting papers and researched the pertinent cases, concludes that no grounds exist for exercising personal jurisdiction over defendants herein.

The claim by plaintiff that defendants are "doing

business" in New York through their agent, the Norman M. Morris Corp. is without merit. The Morris corporation is an independent distributor of defendants' products; as such its business activities within New York State cannot be attributed to defendants. Delagi v. Volkswagenwerk AG of Wolfsburg, Germany, 328 N.Y.S.2d 653 (1972). Nor does this cause of action arise out of any "transaction of business" within New York State.

Accordingly, the complaint is dismissed without costs. Plaintiff's motion for remand is denied.

So ordered.

U. S. D. J.

UNITED STATES COURT OF APPEALS : 2nd CIRCUIT

CLARENCE H. McSHAN,

Appellant,

- against -

OMEGA LOUIS BRANDT ETHER E, S.A.
and SOCIETE SUISSE POUR L'INDUSTRIE
HORLOGERE MANAGEMENT SERVICES, S.A.

Appellees.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, Victor Ortega, *being duly sworn,*
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York

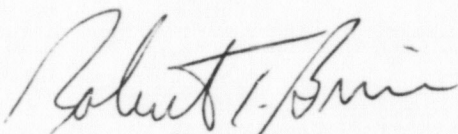
That on the 17th day of feb. 1976 at 350 Fifth Avenue, New York, N.Y.

deponent served the annexed *affidavit* upon

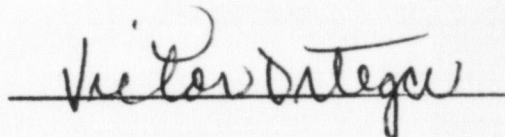
Milton Friedman attorney for

the appellees in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the attorney herein.

Sworn to before me, this 17th
day of Feb. 1976



ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977



VICTOR ORTEGA